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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

vs.

Joshua Russell,
Defendant.

No. 2:22-cr-01661-PHX-SPL

PLEA AGREEMENT

Plaintiff, the United States of America, by and through the undersigned attorneys for the Counterterrorism Section, National Security Division, United States Department of Justice, and for the United States Attorney's Office for the District of Arizona, and the defendant, Joshua Russell, hereby agree to resolve this matter on the following terms and conditions:

1 **1. PLEA**

2 The defendant will plead guilty to Count One of the Indictment charging the
3 defendant with a violation of: 18 U.S.C. § 875(c) (Interstate Threat), which is a Class D
4 felony offense.

5 **2. MAXIMUM PENALTIES**

6 a. A violation of 18 U.S.C. § 875(c), Count One, is punishable by a maximum
7 fine of \$250,000, a maximum term of imprisonment of five (5) years, or both, and a term
8 of supervised release of three (3) years. A maximum term of probation for the offense is
9 five years (including a minimum term of one year if probation is imposed).

10 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
11 Reform Act of 1984, the Court shall order the defendant to:

12 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
13 § 3663 and/or 3663A, unless the Court determines that restitution would not be
14 appropriate;

15 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
16 fine is not appropriate;

17 (3) serve a term of supervised release when required by statute or when a
18 sentence of imprisonment of more than one year is imposed (with the understanding that
19 the Court may impose a term of supervised release in all other cases); and

20 (4) pay upon conviction a \$100 special assessment for each count to
21 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

22 c. The Court is required to consider the Sentencing Guidelines in determining
23 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
24 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
25 by statute for the crime(s) of conviction.

1 **3. AGREEMENTS REGARDING SENTENCING**

2 a. The defendant understands that the sentence in this case will be determined
3 by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including
4 a consideration of the Sentencing Guidelines.

5 b. There are no agreements regarding the final sentence in the case except that
6 the United States will recommend that the defendant be sentenced to a term of
7 imprisonment within the Sentencing Guidelines range as determined by the Court.

8 c. In support of any variance argument, the defendant agrees to provide to the
9 United States reports, motions, and documentation of any kind on which the defendant
10 intends to rely at sentencing not later than twenty-one days before sentencing. Any basis
11 for sentencing with respect to which all reports, motions, and documentation have not been
12 provided to the United States at least twenty-one days before sentencing shall be deemed
13 waived.

14 d. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
15 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no
16 event more than \$20,000, to all victims directly or proximately harmed by the defendant's
17 "relevant conduct," including conduct pertaining to any dismissed counts or uncharged
18 conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes
19 an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant understands that
20 such restitution will be included in the Court's Order of Judgment and that an unanticipated
21 restitution amount will not serve as grounds to withdraw the defendant's guilty plea or to
22 withdraw from this plea agreement.

23 e. Assets and Financial Responsibility. The defendant shall make a full
24 accounting of all assets in which the defendant has any legal or equitable interest. The
25 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
26 transfer any such assets or property before sentencing, without the prior approval of the
27 United States (provided, however, that no prior approval will be required for routine, day-
28 to-day expenditures). The defendant also expressly authorizes the Counterterrorism

1 Section or the United States Attorney's Office to immediately obtain a credit report as to
2 the defendant in order to evaluate the defendant's ability to satisfy any financial obligation
3 imposed by the Court. The defendant also shall make full disclosure of all current and
4 projected assets to the U.S. Probation Office immediately and prior to the termination of
5 the defendant's supervised release or probation, such disclosures to be shared with the
6 Counterterrorism Section and the U.S. Attorney's Office, including the Financial Litigation
7 Unit, for any purpose. Finally, the defendant shall participate in the Inmate Financial
8 Responsibility Program to fulfill all financial obligations due and owing under this
9 agreement and the law.

10 f. Acceptance of Responsibility. If the defendant makes full and complete
11 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
12 commission of the offense, and if the defendant demonstrates an acceptance of
13 responsibility for this offense up to and including the time of sentencing, the United States
14 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
15 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
16 the United States will move the Court for an additional one-level reduction in the applicable
17 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

18 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

19 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
20 sentencing, shall dismiss the following charges: Counts 2-6 of the Indictment.

21 b. If the Court accepts the defendant's plea of guilty and the defendant fulfills
22 each of the terms and conditions of this Plea Agreement, the United States agrees that it
23 will not further prosecute the defendant for any crimes described in the below factual basis.
24 This agreement does not provide any limitation of liability arising out of any acts of
25 violence.

26 c. This agreement does not, in any manner, restrict the actions of the United
27 States in any other district or bind any other United States Attorney's Office.

28

1 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

2 a. If the Court, after reviewing this plea agreement, concludes that any
3 provision contained herein is inappropriate, it may reject the plea agreement and give the
4 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
5 11(c)(5).

6 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
7 vacated, or reversed at any time, this agreement shall be null and void, the United States
8 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
9 any charges that have been dismissed because of this plea agreement shall automatically
10 be reinstated. In such event, the defendant waives any and all objections, motions, and
11 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
12 restrictions in bringing later charges or proceedings. The defendant understands that any
13 statements made at the time of the defendant's change of plea or sentencing may be used
14 against the defendant in any subsequent hearing, trial, or proceeding subject to the
15 limitations of Fed. R. Evid. 410.

16 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

17 The defendant waives (1) any and all motions, defenses, probable cause
18 determinations, and objections that the defendant could assert to the indictment or
19 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
20 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
21 judgment against the defendant, or any aspect of the defendant's sentence, including the
22 manner in which the sentence is determined, including but not limited to any appeals under
23 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
24 (habeas petitions), and any right to file a motion for modification of sentence, including
25 under 18 U.S.C. § 3582(c) (except for the right to file a compassionate release motion under
26 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). This waiver shall
27 result in the dismissal of any appeal, collateral attack, or other motion the defendant might
28 file challenging the conviction, order of restitution or forfeiture, or sentence in this case.

1 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective
2 assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section
3 II.B of Ariz. Ethics Op. 15-01 (2015)).

4 **7. DISCLOSURE OF INFORMATION**

5 a. The United States retains the unrestricted right to provide information and
6 make any and all statements it deems appropriate to the U.S. Probation Office and to the
7 Court in connection with the case.

8 b. Any information, statements, documents, and evidence that the defendant
9 provides to the United States pursuant to this agreement may be used against the defendant
10 at any time.

11 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
12 cooperation shall include providing complete and truthful responses to questions posed by
13 the U.S. Probation Office including, but not limited to, questions relating to:

- 14 (1) criminal convictions, history of drug abuse, and mental illness; and
15 (2) financial information, including present financial assets or liabilities
16 that relate to the ability of the defendant to pay a fine or restitution.

17 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

18 a. Nothing in this agreement shall be construed to protect the defendant from
19 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
20 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
21 monetary penalties, including restitution imposed by the Court, shall be due immediately
22 upon judgment, shall be subject to immediate enforcement by the United States, and shall
23 be submitted to the Treasury Offset Program so that any federal payment or transfer of
24 returned property the defendant receives may be offset and applied to federal debts (which
25 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
26 payments, the schedule of payments shall be merely a schedule of minimum payments and
27 shall not be a limitation on the methods available to the United States to enforce the
28 judgment.

1 **9. ELEMENTS**

2 **Interstate Threat (18 U.S.C. § 875(c)) Count One**

3 On or about August 2, 2022, in the District of Arizona and elsewhere:

- 4 1. the defendant knowingly transmitted a communication containing a “true
5 threat”¹ to injure or kill another person;
6 2. the defendant transmitted the communication for the purpose of issuing a true
7 threat; and
8 3. the communication was transmitted in interstate or foreign commerce.

9 **10. FACTUAL BASIS**

10 a. The defendant admits that the following facts are true and that if this matter
11 were to proceed to trial the United States could prove the following facts beyond a
12 reasonable doubt:

13 On or about August 2, 2022, while in or near Bucyrus, Ohio, Defendant transmitted
14 a voicemail message to Election Official 1 with the Arizona Secretary of State’s Office in
15 Phoenix, Arizona, in which he stated the following:

16 “‘This message is for traitor [Election Official 1’s full name]. You’ve drug your
17 feet, you’ve done nothing, to protect our election for 2020. You’re committing election
18 fraud, you’re starting to do it again, from day one. You’re the enemy of the United States,
19 you’re a traitor to this country, and you better put your sh[inaudible], your fucking affairs
20 in order, ’cause your days [inaudible] are extremely numbered. America’s coming for you,
21 and you will pay with your life, you communist fucking traitor bitch.”

22 Arizona’s primary elections were held on August 2, 2022. Upon listening to the
23 voicemail message from Defendant, employees with the Arizona Secretary of State’s
24 Office expressed fear and immediately reported the message to law enforcement. Federal
25 _____

26
27 ¹ As used herein, “true threat” denotes that the defendant meant to communicate a
28 serious expression of an intent to commit an act of unlawful violence to a particular
 individual or group of individuals, and that a reasonable person who read the defendant’s
 message would have interpreted that message as a true threat.

1 and state law enforcement immediately began investigating the voicemail as potentially
2 posing an imminent threat to the life of Election Official 1.

3 Second, on or about September 9, 2022, while in or near Bucyrus, Ohio, Defendant
4 transmitted a voicemail message to Election Official 1 in Phoenix, Arizona, in which he
5 stated the following:

6 "This message is for terrorist [Election Official 1's last name]. The only reason
7 you're still walking around on this planet is because we're waiting for the midterms to see
8 you prosecuted for the crimes you have done to our nation. You are a terrorist. You are a
9 derelict criminal. And you have a few short months to see yourself behind bars, or we will
10 see you to the grave. You are a traitor to this nation, and you will suffer the fucking
11 consequences."

12 The Arizona Secretary of State's Office provided the September 9, 2022 voicemail
13 message from Defendant to federal law enforcement.

14 Third, on or about November 15, 2022, while in or near Galion, Ohio, Defendant
15 transmitted a voicemail message to Election Official 1 in Phoenix, Arizona, in which he
16 stated the following:

17 "This message is for communist, criminal, [Election Official 1's full name]. We
18 will not endure your crimes on America another day. You've been busted, over and over
19 again. We will not wait for you to be drugged through court. A war is coming for you.
20 The entire nation is coming for you. And we will stop, at no end, until you are in the
21 ground. You're a traitor to this nation. You're a fucking piece of shit communist, and you
22 just signed your own death warrant. Get your affairs in order, cause, your days are very
23 short."

24 Upon listening to the November 15, 2022 voicemail message from Defendant,
25 employees with the Arizona Secretary of State's Office expressed fear and reported the
26 message to law enforcement. Federal and state law enforcement began investigating the
27 voicemail as potentially posing an imminent threat to the life of Election Official 1.

28 When initially questioned by law enforcement, Defendant denied that he transmitted

1 the three voicemail messages described herein. After Defendant's arrest, Defendant stated
2 that he transmitted the three voicemail messages described herein.

3 Defendant transmitted each of the August 2, 2022, September 9, 2022, and
4 November 15, 2022 voicemail messages described herein for the purpose of issuing a true
5 threat.

6 Defendant acknowledges that a reasonable recipient would have interpreted each of
7 the August 2, 2022, September 9, 2022, and November 15, 2022 voicemail messages
8 described herein as a true threat.

9 b. The defendant shall swear under oath to the accuracy of this statement and,
10 if the defendant should be called upon to testify about this matter in the future, any
11 intentional material inconsistencies in the defendant's testimony may subject the defendant
12 to additional penalties for perjury or false swearing, which may be enforced by the United
13 States under this agreement.

14 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

15 I have read the entire plea agreement with the assistance of my attorney. I
16 understand each of its provisions and I voluntarily agree to it.

17 I have discussed the case and my constitutional and other rights with my attorney.
18 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
19 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
20 present evidence in my defense, to remain silent and refuse to be a witness against myself
21 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
22 to be presumed innocent until proven guilty beyond a reasonable doubt.

23 I agree to enter my guilty plea as indicated above on the terms and conditions set
24 forth in this agreement.

25 I have been advised by my attorney of the nature of the charges to which I am
26 entering my guilty plea. I have further been advised by my attorney of the nature and range
27 of the possible sentence and that my ultimate sentence shall be determined by the Court
28 after consideration of the advisory Sentencing Guidelines.

1 My guilty plea is not the result of force, threats, assurances, or promises, other than
2 the promises contained in this agreement. I voluntarily agree to the provisions of this
3 agreement and I agree to be bound according to its provisions.

4 I understand that if I am granted probation or placed on supervised release by the
5 Court, the terms and conditions of such probation/supervised release are subject to
6 modification at any time. I further understand that if I violate any of the conditions of my
7 probation/supervised release, my probation/supervised release may be revoked and upon
8 such revocation, notwithstanding any other provision of this agreement, I may be required
9 to serve a term of imprisonment or my sentence otherwise may be altered.

10 This written plea agreement, and any written addenda filed as attachments to this
11 plea agreement, contain all the terms and conditions of the plea. Any additional
12 agreements, if any such agreements exist, shall be recorded in a separate document and
13 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
14 be in the public record.

15 I further agree that promises, including any predictions as to the Sentencing
16 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
17 (including my attorney) that are not contained within this written plea agreement, are null
18 and void and have no force and effect.

19 I am satisfied that my defense attorney has represented me in a competent manner.

20 I fully understand the terms and conditions of this plea agreement. I am not now
21 using or under the influence of any drug, medication, liquor, or other intoxicant or
22 depressant that would impair my ability to fully understand the terms and conditions of this
23 plea agreement.

24
25 8-2-23
26 Date

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28 JOSHUA RUSSELL
Defendant

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APPROVAL OF DEFENSE COUNSEL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea including the maximum statutory sentence possible. I have further discussed the concept of the advisory Sentencing Guidelines with the defendant. No assurances, promises, or representations have been given to me or to the defendant by the United States or any of its representatives that are not contained in this written agreement. I concur in the entry of the plea as indicated above and that the terms and conditions set forth in this agreement are in the best interests of my client. I agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all the requirements of Fed. R. Crim. P. 11.

8/10/2023
Date



JAZMIN ALAGHA
Attorney for Defendant

APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

GARY M. RESTAINO
United States Attorney
District of Arizona

By:


Sean K. Lokey
Assistant U.S. Attorney

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LOKEY
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By:

Tanya
Senanayake
Tanya Senanayake
Trial Attorney
Counterterrorism Section
National Security Division
U.S. Department of Justice

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Senanayake
Date: 2023.08.10 14:21:13
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ACCEPTANCE BY THE COURT

Date

Honorable STEVEN P. LOGAN
United States District Judge